

**Illinois Department of Revenue
Regulations**

Title 86 Part 693 Section 693.115 Jurisdictional Questions

TITLE 86: REVENUE

PART 693

NON-HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX

Section 693.115 Jurisdictional Questions

a) Municipal and Municipality Defined

When used in this Part, "municipal" and "municipality" mean a city, village, or incorporated town, including an incorporated town that has superseded a civil township.

b) Mere Solicitation of Orders Not Doing Business

- 1) For a seller to incur Non-Home Rule Municipal Retailers' Occupation Tax liability in a given municipality, the sale must be made in the course of the seller's engaging in the retail business within that municipality. In other words, enough of the selling activity must occur within the municipality to justify concluding that the seller is engaged in business within the municipality with respect to that sale.
- 2) For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where the orders were subject to acceptance outside the taxing jurisdiction and title passed outside the jurisdiction, with the goods being shipped from outside the jurisdiction to the purchaser in the jurisdiction, did not constitute engaging in the business of selling within the jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the municipality as the taxing jurisdiction as much as to the State as the taxing jurisdiction.

c) Seller's Acceptance of Order

- 1) Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of that place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order that is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of that place of business, the seller incurs Non-Home Rule Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the

purchaser receives the physical possession of the property in Illinois. The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives the purchase order from the purchaser in the absence of clear proof to the contrary.

- 2) If a purchase order is accepted outside this State, but the tangible personal property that is sold is in an inventory of the retailer located within the municipality at the time of its sale (or is subsequently produced in the municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in the municipality) will determine where the seller is engaged in business for Non-Home Rule Municipal Retailers' Occupation Tax purposes with respect to the sale.

d) Some Considerations That Are Not Controlling

- 1) Delivery of the property within the municipality to the purchaser is not necessary for the seller to incur Non-Home Rule Municipal Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intermunicipality commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the municipality for the seller to be regarded as being engaged in the business of selling within the municipality with respect to that sale.

2) The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether the seller incurs Non-Home Rule Municipal Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in such municipality" in the Non-Home Rule Municipal Retailers' Occupation Tax Act refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See *Standard Oil Company vs. Department of Finance et al.*, 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)

e) Place of Business Where Long Term or Blanket Contracts Are Involved

Under a long term blanket or master contract that (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Non-Home Rule Municipal Retailers' Occupation Tax purposes with respect to the orders.

f) Sales Through Vending Machines

The seller's place of engaging in business when making sales through a vending machine is the place where the vending machine is located when the sales are made.

g) Sales from Vehicles Carrying Uncommitted Stock of Goods

The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries)

from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries happen to be made - the vehicle carrying the stock of goods for sale being regarded as a portable place of business.

h) Sales of Coal or Other Minerals

For the purpose of determining the tax that is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.

- 1) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- 2) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the municipality and transports it to an out-of-State destination.
- 3) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the Non-Home Rule Municipal Retailers' Occupation Tax on that sale will go to the municipality where the retailer is located.